

REFERENCE TITLE: **judicial vacancies; appointments; confirmation**

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SCR 1014

Introduced by
Senator Gray C

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE VI, SECTIONS 12, 20, 28, 30, 35, 37, 38, 39, 40 AND 41, CONSTITUTION OF ARIZONA; RELATING TO THE JUDICIAL DEPARTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it resolved by the Senate of the State of Arizona, the House of Representatives concurring:

1. Article VI, sections 12, 20, 28, 30, 35, 37, 38, 39, 40 and 41 Constitution of Arizona, are proposed to be amended as follows if approved by the voters and on proclamation of the Governor:

12. Superior court: term of office

Section 12. A. Judges of the superior court in counties having a population of less than ~~two~~ SEVEN hundred fifty thousand persons according to the most recent United States census shall be elected by the qualified electors of their counties at the general election. They shall hold office for a regular term of four years except as provided by this section from and after the first Monday in January next succeeding their election, and until their successors are elected and qualify. The names of all candidates for judge of the superior court in such counties shall be placed on the regular ballot without partisan or other designation except the division and title of the office.

B. The governor shall fill any vacancy in such counties by appointing a person to serve until the election and qualification of a successor. At the next succeeding general election following the appointment of a person to fill a vacancy, a judge shall be elected to serve for the remainder of the unexpired term.

Judges of the superior court in counties having a population of ~~two~~ SEVEN hundred fifty thousand persons or more according to the most recent United States census shall hold office for a regular term of four years except as provided by this article.

20. Retirement and service of retired justices and judges

Section 20. The legislature shall prescribe by law a plan of retirement for justices and judges of courts of record, including the basis and amount of retirement pay, and requiring except as provided in section 35 of this article, that justices and judges of courts of record be retired upon reaching the age of ~~seventy~~ SEVENTY-FIVE. Any retired justice or judge of any court of record who is drawing retirement pay may serve as a justice or judge of any court. When serving outside ~~his~~ THE JUSTICE'S OR JUDGE'S county of residence, any such retired justice or judge shall receive ~~his~~ necessary traveling and subsistence expenses. A retired judge who is temporarily called back to the active duties of a judge is entitled to receive the same compensation and expenses as other like active judges less any amount received for such period in retirement benefits.

1 28. Justices and judges: dual office holding:
 2 political activity: practice of law

3 Section 28. Justices and judges of courts of record shall
 4 not be eligible for any other public office or for any other
 5 public employment during their term of office, except that they
 6 may assume another judicial office, and upon qualifying
 7 therefor, the office formerly held shall become vacant. No
 8 justice or judge of any court of record shall practice law
 9 during his continuance in office, nor shall he hold any office
 10 in a political party or actively take part in any political
 11 campaign other than his own for his reelection or retention in
 12 office. Any justice or judge who files nomination papers for an
 13 elective office, other than for judge of the superior court or a
 14 court of record inferior to the superior court in a county
 15 having a population of less than ~~two~~ SEVEN hundred fifty
 16 thousand persons according to the most recent United States
 17 census, forfeits his judicial office.

18 30. Courts of record

19 Section 30. A. The supreme court, the court of appeals
 20 and the superior court shall be courts of record. Other courts
 21 of record may be established by law, but justice courts shall
 22 not be courts of record.

23 B. All justices and judges of courts of record, except
 24 for judges of the superior court and other courts of record
 25 inferior to the superior court in counties having a population
 26 of less than ~~two~~ SEVEN hundred fifty thousand persons according
 27 to the most recent United States census, shall be appointed in
 28 the manner provided in section 37 of this article.

29 35. Continuance in office; continued existence of
 30 offices; application of prior statute and rules

31 Section 35. A. All justices, judges, justices of the
 32 peace and officers of any court who are holding office as such
 33 by election or appointment at the time of the adoption of this
 34 section OR ANY AMENDMENT TO THIS SECTION shall serve or continue
 35 in office for the respective terms for which they are so elected
 36 or for their respective unexpired terms, and until their
 37 successors are elected or appointed and qualify or they are
 38 retained in office pursuant to section 38 of this article;
 39 ~~provided, however,~~ EXCEPT that any justice or judge elected at
 40 the general election at which this section is adopted shall
 41 serve for the term for which ~~he~~ THE JUSTICE OR JUDGE is so
 42 elected. The continued existence of any office heretofore
 43 legally established or held shall not be abolished or repealed
 44 by the adoption of this article. The statutes and rules
 45 relating to the authority, jurisdiction, practice and procedure

1 of courts, judicial officers and offices in force at the time of
 2 the adoption of this article and not inconsistent herewith,
 3 shall, so far as applicable, apply to and govern such courts,
 4 judicial officers and offices until amended or repealed.

5 B. All judges of the superior court holding office by
 6 appointment or retention in counties with a population of ~~two~~
 7 SEVEN hundred fifty thousand persons or more according to the
 8 most recent United States census at the time of the adoption of
 9 this amendment OR ANY SUBSEQUENT AMENDMENT to this section shall
 10 serve or continue in office for the respective terms for which
 11 they were appointed. Upon an incumbent vacating the office of
 12 judge of the superior court, whether by failing to file a
 13 declaration for retention, by rejection by the qualified
 14 electors of the county or resignation, the appointment shall be
 15 pursuant to section 37 of this article.

16 37. Judicial vacancies and appointments; initial
 17 terms; residence; age

18 Section 37. A. Within sixty days from the occurrence of
 19 a vacancy in the office of a justice OF THE SUPREME COURT or A
 20 judge of ~~any~~ AN INTERMEDIATE APPELLATE court of record, ~~except~~
 21 ~~for vacancies occurring in the office of a judge of the superior~~
 22 ~~court or a judge of a court of record inferior to the superior~~
 23 ~~court, the commission on appellate court appointments, if the~~
 24 ~~vacancy is in the supreme court or an intermediate appellate~~
 25 ~~court of record, shall submit to the governor the names of not~~
 26 less than three persons nominated by it to fill such vacancy, no
 27 more than two of whom shall be members of the same political
 28 party unless there are more than four such nominees, in which
 29 event not more than sixty ~~percentum~~ PER CENT of such nominees
 30 shall be members of the same political party.

31 B. Within sixty days from the occurrence of a vacancy in
 32 the office of a judge of the superior court or a judge of a
 33 court of record inferior to the superior court, except for
 34 vacancies occurring in the office of a judge of the superior
 35 court or a judge of a court of record inferior to the superior
 36 court in a county having a population of less than ~~two~~ SEVEN
 37 hundred fifty thousand persons according to the most recent
 38 United States census, the commission on trial court appointments
 39 for the county in which the vacancy occurs shall submit to the
 40 governor the names of not less than three persons nominated by
 41 it to fill such vacancy, no more than two of whom shall be
 42 members of the same political party unless there are more than
 43 four such nominees, in which event no more than sixty per ~~centum~~
 44 CENT of such nominees shall be members of the same political
 45 party. A nominee shall be under sixty-five years of age at the

1 time ~~his~~ THE NOMINEE'S name is submitted to the governor.
 2 Judges of the superior court shall be subject to retention or
 3 rejection by a vote of the qualified electors of the county from
 4 which they were appointed at the general election in the manner
 5 provided by section 38 of this article.

6 C. A vacancy in the office of a justice OF THE SUPREME
 7 COURT or a judge of ~~such courts of record~~ AN INTERMEDIATE
 8 APPELLATE COURT shall be filled by appointment by the governor
 9 without regard to political affiliation from one of the nominees
 10 whose names ~~shall be~~ ARE submitted to ~~him~~ THE GOVERNOR as
 11 hereinabove provided. In making the appointment, the governor
 12 shall consider the diversity of the state's population for an
 13 appellate court appointment ~~and the diversity of the county's~~
 14 ~~population for a trial court appointment~~, however, the primary
 15 consideration shall be merit. If the governor does not appoint
 16 one of such nominees to fill such vacancy within sixty days
 17 after their names are submitted to the governor by such
 18 commission OR DOES NOT APPOINT A PERSON OF THE GOVERNOR'S OWN
 19 CHOOSING, the chief justice of the supreme court ~~forthwith~~ shall
 20 appoint ONE OF THE NOMINEES on the basis of merit alone without
 21 regard to political affiliation ~~one of such nominees~~ to fill
 22 such vacancy. If such commission does not, within sixty days
 23 after such vacancy occurs, submit the names of nominees as
 24 hereinabove provided, the governor shall have the power to
 25 appoint any qualified person to fill such vacancy at any time
 26 thereafter prior to the time the names of the nominees to fill
 27 such vacancy are submitted to the governor as hereinabove
 28 provided. Each justice or judge so appointed shall initially
 29 hold office for a term ending sixty days following the next
 30 regular general election after the expiration of a term of two
 31 years in office. Thereafter, the terms of justices or judges of
 32 the supreme court and the superior court shall be as provided by
 33 this article.

34 D. A VACANCY IN THE OFFICE OF A JUDGE OF THE SUPERIOR
 35 COURT OR A JUDGE OF A COURT OF RECORD INFERIOR TO THE SUPERIOR
 36 COURT SHALL BE FILLED BY APPOINTMENT BY THE GOVERNOR WITHOUT
 37 REGARD TO POLITICAL AFFILIATION FROM ONE OF THE NOMINEES WHOSE
 38 NAMES ARE SUBMITTED TO THE GOVERNOR AS HEREINABOVE PROVIDED OR
 39 BY APPOINTMENT OF ANY QUALIFIED PERSON OF THE GOVERNOR'S OWN
 40 CHOOSING. THE GOVERNOR SHALL SUBMIT TO THE SENATE FOR THE
 41 CONSENT OF THE SENATE THE NAME OF THE NOMINEE FOR JUDGE. IF THE
 42 SENATE CONSENTS TO THE NOMINATION, THE GOVERNOR SHALL APPOINT
 43 THE NOMINEE TO SERVE FOR THE TERM OR, IN THE CASE OF A VACANCY,
 44 FOR THE UNEXPIRED TERM IN WHICH THE VACANCY OCCURRED. IF THE
 45 SENATE REJECTS THE NOMINATION, THE GOVERNOR SHALL PROMPTLY

NOMINATE ANOTHER PERSON WHO MEETS THE REQUIREMENTS FOR THE OFFICE. A NOMINEE FOR JUDGE SHALL NOT TAKE OFFICE OR DISCHARGE ANY DUTIES OF THE OFFICE BEFORE OBTAINING THE CONSENT OF THE SENATE. IN MAKING THE APPOINTMENT, THE GOVERNOR SHALL CONSIDER THE DIVERSITY OF THE COUNTY'S POPULATION FOR A TRIAL COURT APPOINTMENT, HOWEVER, THE PRIMARY CONSIDERATION SHALL BE MERIT. IF THE GOVERNOR DOES NOT APPOINT ONE OF THE NOMINEES TO FILL SUCH VACANCY WITHIN SIXTY DAYS AFTER THEIR NAMES ARE SUBMITTED TO THE GOVERNOR BY THE COMMISSION OR DOES NOT APPOINT A PERSON OF THE GOVERNOR'S OWN CHOOSING, THE CHIEF JUSTICE OF THE SUPREME COURT SHALL APPOINT ONE OF THE NOMINEES ON THE BASIS OF MERIT ALONE WITHOUT REGARD TO POLITICAL AFFILIATION TO FILL THE VACANCY. EACH JUDGE SO APPOINTED SHALL INITIALLY HOLD OFFICE FOR A TERM ENDING SIXTY DAYS FOLLOWING THE NEXT REGULAR GENERAL ELECTION AFTER THE EXPIRATION OF A TERM OF TWO YEARS IN OFFICE. THEREAFTER, THE TERMS OF THE JUDGES OF THE SUPERIOR COURT SHALL BE AS PROVIDED BY THIS ARTICLE.

~~D.~~ E. A person appointed to fill a vacancy on an intermediate appellate court or another court of record now existing or hereafter established by law shall have been a resident of the counties or county in which that vacancy exists for at least one year ~~prior to his~~ BEFORE THE PERSON'S appointment, in addition to possessing the other required qualifications. A nominee shall be under sixty-five years of age at the time ~~his~~ THE NOMINEE'S name is submitted to the governor.

38. Declaration of candidacy; form of judicial ballot. rejection and retention; failure to file declaration

Section 38. A. A justice or judge of the supreme court or an intermediate appellate court shall file in the office of the secretary of state, and a judge of the superior court or other court of record including such justices or judges who are holding office as such by election or appointment at the time of the adoption of this section ~~OR ANY AMENDMENT TO THIS SECTION~~ except for judges of the superior court and other courts of record inferior to the superior court in counties having a population of less than ~~two~~ SEVEN hundred fifty thousand persons, ~~—~~ according to the United States census, shall file in the office of the clerk of the board of supervisors of the county in which he regularly sits and resides, not less than sixty nor more than ninety days ~~prior to~~ BEFORE the regular general election next preceding the expiration of his term of office, a declaration of his desire to be retained in office, and the secretary of state shall certify to the several boards

of supervisors the appropriate names of the candidate or candidates appearing on such declarations filed in his office.

B. The name of any justice or judge whose declaration is filed as provided in this section shall be placed on the appropriate official ballot at the next regular general election under a nonpartisan designation and in substantially the following form:

Shall _____, (Name of justice or judge) of the _____ court be retained in office? Yes ___ No ___ (Mark X after one).

C. If a majority of those voting on the question votes "No," ~~then,~~ upon the expiration of the term for which such justice or judge was serving, a vacancy shall exist, which shall be filled as provided by this article. If a majority of those voting on the question votes "Yes," such justice or judge shall remain in office for another term, subject to removal as provided by this constitution.

D. The votes shall be counted and canvassed and the result declared as in the case of state and county elections, whereupon a certificate of retention or rejection of the incumbent justice or judge shall be delivered to ~~him~~ THE INCUMBENT by the secretary of state or the clerk of the board of supervisors, as the case may be.

E. If a justice or judge fails to file a declaration of ~~his~~ THE JUSTICE'S OR JUDGE'S desire to be retained in office, as required by this section, ~~then-his~~ THE JUSTICE'S OR JUDGE'S office shall become vacant upon expiration of the term for which such justice or judge was serving.

39. Retirement of justices and judges; vacancies

Section 39. A. On attaining the age of ~~seventy~~ SEVENTY-FIVE years a justice or judge of a court of record shall retire and ~~his~~ THE JUSTICE'S OR JUDGE'S judicial office shall be vacant, except as otherwise provided in section 35 of this article. In addition to becoming vacant as provided in this section, the office of a justice or judge of any court of record becomes vacant upon ~~his~~ THE JUSTICE'S OR JUDGE'S death or ~~his~~ voluntary retirement pursuant to statute or ~~his~~ voluntary resignation, and also, as provided in section 38 of this article, upon the expiration of ~~his~~ THE JUSTICE'S OR JUDGE'S term next following a general election at which a majority of those voting on the question of ~~his~~ THE JUSTICE'S OR JUDGE'S retention vote in the negative or for which general election ~~he~~ THE JUSTICE OR JUDGE is required, but fails, to file a declaration of ~~his~~ desire to be retained in office.

1 B. This section is alternative to and cumulative with the
 2 methods of removal of judges and justices provided in **ARTICLE**
 3 **VI.I AND ARTICLE VIII**, parts 1 and 2 ~~of article 8 and article~~
 4 ~~6.1 of this Constitution.~~

5 40. Option for counties with less than seven hundred
 6 fifty thousand persons

7 Section 40. Notwithstanding any provision of this article
 8 to the contrary, any county having a population of less than ~~two~~
 9 **SEVEN** hundred fifty thousand persons, according to the most
 10 recent United States census, may choose to select its judges of
 11 the superior court or of courts of record inferior to the
 12 superior court as if it had a population of ~~two~~ **SEVEN** hundred
 13 fifty thousand or more persons. Such choice shall be determined
 14 by vote of the qualified electors of such county voting on the
 15 question at an election called for such purpose by resolution of
 16 the board of supervisors of such county. If such qualified
 17 electors approve, the provisions of sections 12, 28, 30, 35,
 18 ~~through 37, 38,~~ 39, 41 and 42 shall apply as if such county had
 19 a population of ~~two~~ **SEVEN** hundred fifty thousand persons or
 20 more.

21 41. Superior court divisions; commission on trial
 22 court appointments; membership; terms

23 A. Except as otherwise provided, judges of the superior
 24 court in counties having a population of ~~two~~ **SEVEN** hundred fifty
 25 thousand persons or more according to the most recent United
 26 States census shall hold office for a regular term of four
 27 years.

28 B. There shall be a nonpartisan commission on trial court
 29 appointments for each county having a population of ~~two~~ **SEVEN**
 30 hundred fifty thousand persons or more according to the most
 31 recent United States census which shall be composed of the
 32 following members:

33 1. The chief justice of the supreme court, who shall be
 34 the chairman of the commission. In the event of the absence or
 35 incapacity of the chairman the supreme court shall appoint a
 36 justice ~~thereof~~ **OF THE SUPREME COURT** to serve in ~~his~~ **THE**
 37 **JUSTICE'S** place and stead.

38 2. Five attorney members, none of whom shall reside in
 39 the same supervisorial district and not more than three of whom
 40 shall be members of the same political party, who are nominated
 41 by the board of governors of the state bar of Arizona and who
 42 are appointed by the governor subject to confirmation by the
 43 senate in the manner prescribed by law.

44 3. Ten nonattorney members, no more than two of whom
 45 shall reside in the same supervisorial district.

1 C. At least ninety days ~~prior to~~ BEFORE a term expiring
 2 or within twenty-one days of a vacancy occurring for a
 3 nonattorney member on the commission for trial court
 4 appointments, the member of the board of supervisors from the
 5 district in which the vacancy has occurred shall appoint a
 6 nominating committee of seven members who reside in the
 7 district, not more than four of whom may be from the same
 8 political party. The ~~make-up~~ MAKEUP of the committee ~~shall~~, to
 9 the extent feasible, SHALL reflect the diversity of the
 10 population of the district. Members shall not be attorneys and
 11 shall not hold any governmental office, elective or appointive,
 12 for profit. The committee shall provide public notice that a
 13 vacancy exists and shall solicit, review and forward to the
 14 governor all applications along with the committee's
 15 recommendations for appointment. The governor shall appoint two
 16 persons from each supervisorial district who shall not be of the
 17 same political party, subject to confirmation by the senate in
 18 the manner prescribed by law.

19 D. In making or confirming appointments to trial court
 20 commissions, the governor, the senate and the state bar shall
 21 endeavor to see that the commission reflects the diversity of
 22 the county's population.

23 E. Members of the commission shall serve staggered four
 24 year terms. ~~, except that initial appointments for the five~~
 25 ~~additional nonattorney members and the two additional attorney~~
 26 ~~members of the commission shall be designated by the governor as~~
 27 ~~follows:~~

28 ~~1. One appointment for a nonattorney member shall be for~~
 29 ~~a one-year term.~~

30 ~~2. Two appointments for nonattorney members shall be for~~
 31 ~~a two-year term.~~

32 ~~3. Two appointments for nonattorney members shall be for~~
 33 ~~a three-year term.~~

34 ~~4. One appointment for an attorney member shall be for a~~
 35 ~~one-year term.~~

36 ~~5. One appointment for an attorney member shall be for a~~
 37 ~~two-year term.~~

38 F. Vacancies shall be filled for the unexpired terms in
 39 the same manner as the original appointments.

40 G. Attorney members of the commission shall have resided
 41 in this state and shall have been admitted to practice in this
 42 state by the supreme court for at least five years and shall
 43 have resided in the supervisorial district from which they are
 44 appointed for at least one year. Nonattorney members shall have
 45 resided in this state for at least five years, shall have

1 resided in the supervisorial district for at least one year
2 before being nominated and shall not be judges, retired judges
3 ~~nor~~ OR admitted to practice before the supreme court. None of
4 the attorney or nonattorney members of the commission shall hold
5 any governmental office, elective or appointive, for profit and
6 no attorney member is eligible for appointment to any judicial
7 office of this state until one year after membership in the
8 commission terminates.

9 H. No person other than the chief justice shall serve at
10 the same time as a member of more than one judicial appointment
11 commission.

12 I. The commission shall submit the names of not less than
13 three individuals for nomination for the office of ~~the~~ superior
14 court judge pursuant to section 37 of this article.

15 J. Prior to making recommendations to the governor, the
16 commission shall conduct investigations, hold public hearings
17 and take public testimony. An executivesession as prescribed
18 by rule may be held upon a two-thirds vote of the members of the
19 commission in a public hearing. Final decisions as to
20 recommendations shall be made without regard to political
21 affiliation in an impartial and objective manner. The
22 commission shall consider the diversity of the county's
23 population and the geographical distribution of the residences
24 of the judges throughout the county, however the primary
25 consideration shall be merit. Voting shall be in a public
26 hearing. The expenses of meetings of the commission and the
27 attendance of members thereof for travel and subsistence shall
28 be paid from the general fund of the state as state officers are
29 paid, upon claims approved by the chairman.

30 K. After public hearings the supreme court shall adopt
31 rules of procedure for the commission on trial court
32 appointments.

33 ~~L. The members of the commission who were appointed~~
34 ~~pursuant to section 36 of this article prior to the effective~~
35 ~~date of this section may continue to serve until the expiration~~
36 ~~of their normal terms. All subsequent appointments shall be~~
37 ~~made as prescribed by this section.~~

38 2. The Secretary of State shall submit this proposition to the voters
39 at the next general election as provided by article XXI, Constitution of
40 Arizona.